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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re D.Y. et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.Y.,

Defendant and Appellant.

B270843

(Los Angeles County
Super. Ct. No. CK99034)

APPEAL from an order of the Superior Court of Los Angeles County, Frank J. Menetrez, Judge. Affirmed.

Jamie A. Moran, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel and Stephen D. Watson, Deputy County Counsel for Plaintiff and Respondent.

I. INTRODUCTION

The mother, R.Y., appeals from a February 25, 2016 order terminating her parental rights. The juvenile court terminated the mother's parental rights to D.Y. and A.Y. The mother argues there is no substantial evidence the younger child, A.Y., was likely to be adopted within a reasonable time. In addition, the mother contends it was error to terminate her parental rights because the sibling and beneficial parent-child relationship exceptions applied. The second contention relates to both children, D.Y. and A.Y. The mother's contentions are without merit. We affirm the order terminating parental rights.

II. PROCEDURAL HISTORY

On April 17, 2013, the Los Angeles County Department of Children and Family Services (department) filed a Welfare and Institutions Code¹ section 300 petition. The petition was filed on behalf of three-year old, D.Y., and seven month old, A.Y. The petition alleges the mother had a history of illicit drug use and currently abused marijuana. On prior occasions in April 2013, the mother was under the influence of marijuana while in A.Y.'s presence. The mother's drug use endangered the children's physical health and safety and placed them at risk of physical harm, damage and danger. At the April 17, 2013 detention hearing, the juvenile court detained the girls and placed them in foster care. The mother was granted monitored visits after she contacted the department.

¹Further statutory references are to the Welfare and Institutions Code.

On October 23, 2013, the juvenile court sustained the petition under section 300, subdivisions (b) and (j). The children were found dependents of the court and removed from parental custody. The mother was granted monitored visits with the department having discretion to liberalize visitation. The juvenile court ordered the mother to participate in a full drug and alcohol program with aftercare and random drug and alcohol testing. The mother also was ordered to participate in a parenting course and individual counseling to address adult and parental responsibility. The mother appealed the jurisdictional and dispositional findings and orders on December 20, 2013. We affirmed the findings and orders in an unpublished opinion. (*In re D.Y.* (Aug. 12, 2014, B253519) [nonpub. opn.]).

At the May 28, 2014 six-month review hearing, the juvenile court found the mother was in partial compliance with her case plan. The juvenile court terminated reunification services for the mother. A section 366.26 hearing was set for September 23, 2014. The section 366.26 hearing was continued several times for completion of the adoption home study.

On February 25, 2016, the juvenile court held a section 366.26 hearing. The mother argued termination of parental rights would be detrimental to the children but did not raise any specific exceptions to adoption. The juvenile court found by clear and convincing evidence that the children were adoptable and no exception applied. The juvenile court terminated parental rights. In addition, the juvenile court designated T.R. as the prospective adoptive

parent. The mother filed her notice of appeal on the same day.

III. FACTS

A. Detention Report

The April 17, 2013 detention report stated on April 10, 2013, the department received a referral alleging seven-month old A.Y. was a victim of general neglect. On April 6, 2013, the mother and a boyfriend, Ivan B., brought A.Y. to the hospital because the child had pneumonia. On April 8, 2013, a day-shift nurse asked the mother and Ivan if they had fed A.Y.. They looked at each other and replied they had not fed A.Y. The caller was concerned because the mother and Ivan had been given A.Y.'s feeding schedule. The caller reported the mother and Ivan left the hospital several times and would return smelling of marijuana. In addition, the mother and Ivan had to be told three times to keep A.Y.'s crib side rail up. This was to prevent A.Y. from falling onto the floor. On one occasion, the mother and Ivan argued so loudly that hospital security staff had to be called.

On April 10, 2013, children's social worker Resheda Patterson arrived at the hospital and interviewed the mother. The mother stated there were only two circumstances when the side rail was down. The first circumstance was when the mother was holding A.Y. The other circumstance was when the mother was sitting next to the bed playing with A.Y. A.Y. was behind in her immunization and had not had her four-month or six-month shots. The mother admitted she and Ivan left the hospital room to smoke marijuana. The mother reported

she was “stressed out” and had no other way to relieve her stress. The mother admitted she smoked marijuana daily.

B. Jurisdiction/Disposition Report

According to the June 6, 2013 jurisdiction and disposition report, A.Y. and D.Y. were placed in separate foster homes. The mother was incarcerated and charged with assault and smuggling a controlled substance into prison. The mother stated she would stop using marijuana to get her children back. The mother did not participate in any programs in her jail. The mother also had not visited with the children because of her incarceration.

C. Last Minute Information for the Court Reports

The July 24, 2013 last information for the court report indicated the children were placed together in the home of a relative, T.R., on July 19, 2013. The September 5, 2013 last minute information for the court report stated the mother was sentenced and convicted for assault and smuggling a controlled substance into prison. The mother’s projected release date was February 11, 2014. The October 23, 2013 last information for the court report indicated the mother was released from jail on probation on October 16, 2013.

D. April 23, 2014 Status Review Report

The April 23, 2014 status review report stated the children were thriving in the home of maternal relatives, Eric R. and T.R., and appeared happy and well-groomed. The children were participating in play therapy. Twenty-month old A.Y. was a very active child who loved to be the center of attention. She was strong-willed and threw

temper tantrums and objects when she was angry. A.Y. would hit, bite and pinch but also openly express affection.

The mother had no stable housing and was staying at various relatives' homes. On November 14, 2013, she enrolled in an outpatient substance abuse program. But the mother was discharged from the drug program on January 9, 2014, after she tested positive for marijuana on four separate occasions in November and December 2013. In addition, the mother had not participated in parenting education or individual counseling to address adult and parental responsibility.

The social worker interviewed T.R. According to T.R., the mother consistently visited the children in November and December 2013. However, the mother only visited twice in January and February 2014. The mother did not visit in March and only visited once in April 2014. The mother interacted more with T.R. than with the children. T.R. would role model for the mother most of the time. Sometimes, the mother would bring strangers to the visits. At times, the mother made arrangements to visit but failed to appear at all or arrived late. T.R. told the social worker the mother would sometimes smell of marijuana when arriving for visits. The mother would also visit when she was under the influence of marijuana.

E. Section 366.26 Report

The September 23, 2014 section 366.26 report stated the children resided with Eric R. and T.R., their prospective adoptive parents. Two-year old A.Y. was a regional center client. She was set to receive regional center services on October 1, 2014. A.Y. attended a childcare center during

the weekdays. The child was a very independent, friendly and outgoing girl. But A.Y. also was aggressive, overly active and had a short attention span. A.Y. attended weekly play therapy sessions with D.Y. and T.R. from May 30, 2013, to July 18, 2014. A.Y.'s regional center mental health case was closed after achieving the goals of reducing physical aggression towards others and forming a healthy attachment to T.R.

The mother had little contact with the children. She had a total of 10 visits in the past 6 months. T.R. reported the last time the mother visited was in June 2014. In addition, T.R. stated the mother telephoned the children once in September 2014.

F. Status Review Reports

The November 25, 2014 status review report indicated the children continued to thrive in the home of Eric R. and T.R., the prospective adoptive parents. The children continued to bond with Eric R. and T.R. as a family unit. Eric R. and T.R. were meeting the children's needs and providing them with good care and supervision. A.Y. was receiving occupational therapy through the regional center's early start program. The report stated the mother had sporadic telephone contact with the children.

The May 26, 2015 status review report stated Eric R., the prospective adoptive father, died after an illness on May 9, 2015. T.R. indicated she wanted to continue the adoption process as a single parent. The family appeared to be coping with their loss. The children were happy, well-groomed and had good appetites. They were attending a new childcare and had adjusted to the new school

environment. A.Y. attended childcare Monday to Friday to increase her socialization and academic skills. A.Y.'s childcare teacher reported the child was a fast learner and very stubborn.

A.Y. was receiving occupational and speech therapies through the regional center's early start program. She started weekly speech therapy in February 2015. A.Y. was a strong willed and active child. A.Y. had a new therapist. This was because of A.Y.'s temper tantrums. When angry, she would throw objects, hit, bite and pinch. The child openly expressed affection along with a wide range of emotions. She could carry out simple directions but sometimes refused to follow them. The mother continued to have sporadic telephone and video contact with the children.

The August 25, 2015 status review report indicated the family, including the children, were coping with the loss of Eric R. The family wanted to move forward with the adoption. The adoption home study was nearly completed and would be submitted for approval at the end of September.

The November 24, 2015 status review report stated the children continued to thrive in the care of T.R. A.Y. continued to attend childcare Monday through Friday. She was no longer a regional center client because she turned three. Once the local school district conducted an individual educational plan for A.Y., she would participate in speech therapy. The school district had not conducted an assessment because the mother, who held the educational rights for A.Y., could not be located in August and

September 2015. The report indicated the mother had been arrested pursuant to a warrant and was incarcerated after she failed to report to the probation department. T.R. agreed to follow up with the school district to have an individual educational plan conducted for A.Y. once the mother's educational rights were limited. The mother continued to have sporadic telephone and video contact with the children.

The report stated T.R. and the children appeared to be coping well with Eric R.'s death. When the children's social worker asked how the family was coping with their loss, T.R. was defensive and replied, "[I]t is a family matter not DCFS." T.R. declined the social worker's grief counseling offer. She explained the family was dealing with the death of her husband through the support of their church and the paternal family. The paternal grandfather is a cleric with his own church. The family appeared to be functioning well, going on outings and short trips. The children appeared happy and gained a great sense of security living with T.R. in a safe and stable home. T.R. was providing good care for the children and wanted to give them a permanent home through adoption. The adoption home study was completed and approved on January 8, 2016. According to the social worker, the department was prepared to move forward with adoptive placement once parental rights were terminated.

IV. DISCUSSION

A. Substantial Evidence Supports the Adoptability Finding

At a section 366.26 hearing, the juvenile court selects and implements a permanent plan for the dependent child. (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53; *In re Marilyn H.* (1993) 5 Cal.4th 295, 304.) Our Supreme Court has summarized the juvenile court's options at the section 366.26 hearing: "In order of preference the choices are: (1) terminate parental rights and order that the child be placed for adoption (the choice the court made here); (2) identify adoption as the permanent placement goal and require efforts to locate an appropriate adoptive family; (3) appoint a legal guardian; or (4) order long-term foster care. (§ 366.26, subd. (b).) Whenever the court finds 'that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption.' (§ 366.26, subd. (c)(1).)" (*In re Celine R.*, *supra*, 31 Cal.4th at p. 53; *In re K.H.* (2011) 201 Cal.App.4th 406, 414; *In re Hector A.* (2005) 125 Cal.App.4th 783, 790-791.)

The juvenile court must find by clear and convincing evidence that the child will likely be adopted within a reasonable time. (§ 366.26, subd. (c)(1); *In re Zenith S.* (2003) 31 Cal.4th 396, 406; *In re R.C.* (2008) 169 Cal.App.4th 486, 491.) In determining adoptability, the juvenile court considers whether the child's age, physical condition and emotional state make it difficult to find someone willing to adopt the minor. (*In re Zenith S.*, *supra*, 31 Cal.4th at p. 406; *In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649.) A prospective adoptive parent's willingness to

adopt indicates a child is likely to be adopted within a reasonable time. (*In re R.C.*, *supra*, 169 Cal.App.4th at p. 491; *In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1649.) We review the juvenile court's adoptability finding for substantial evidence. (*In re R.C.*, *supra*, 169 Cal.App.4th at p. 491; *In re Josue G.* (2003) 106 Cal.App.4th 725, 732.)

The mother challenges the juvenile court's adoptability finding for A.Y. She argues the juvenile court did not have sufficient clear and convincing evidence that A.Y. would likely be adopted by the caregiver. The mother asserts A.Y. poses a challenge to the caregiver with her violent outbursts, aggressive behavior and tantrums. The mother's contentions are without merit.

Substantial evidence supports the juvenile court's determination that it was likely A.Y. would be adopted in a reasonable time. A.Y. and D.Y. had been cared for by T.R. since July 19, 2013. A.Y. was happy, a fast learner, in good physical health and thriving in T.R.'s home. Both children felt secure being in a safe and stable home with T.R. and bonded with their prospective adoptive parent. T.R. provided good care for the children and met all their needs. While in T.R.'s care, A.Y. received play therapy to reduce physical aggression towards others. A.Y. had formed a healthy attachment to T.R. A.Y.'s case was closed after she reached these goals. T.R. also met A.Y.'s developmental needs by taking the child to occupational and speech therapies provided by the regional center's early start program. Further, A.Y. has been attending a childcare center full time to increase her socialization and academic skills since she was two years old. T.R. is aware of A.Y.'s

aggressive behavior and tantrums but remains committed to adopting the youngster. After the death of Eric R., T.R. continued to express interest in adopting A.Y. and D.Y. T.R.'s interest in adopting A.Y. is evidence that the child's behavior and emotional state would not likely dissuade individuals from adopting the youngster. (*In re R.C.*, *supra*, 169 Cal.App.4th at p. 491; *In re Sarah M.*, *supra*, 22 Cal.App.4th at p. 1649.)

The mother further challenges the adoptability finding for A.Y. because a new adoption assessment was not conducted after Eric R.'s death. The mother contends the department's adoption assessment fails to discuss how the prospective adoptive mother would deal with A.Y. as a single parent after Eric R.'s death. But a court's adoptability determination focuses on the child, not the prospective adoptive parent. (*In re Zenith S.*, *supra*, 31 Cal.4th at p. 406; *In re R.C.*, *supra*, 169 Cal.App.4th at p. 493 ["the suitability or availability of the caregiver to adopt is not a relevant inquiry"]; *In re T.S.* (2003) 113 Cal.App.4th 1323, 1328.) Also, the status reports submitted after Eric R.'s death indicate T.R. and the children were coping well with their loss. The family was dealing with the death of Eric R. through the support of their church and the paternal family. The family was functioning well, going on outings and short trips. The children appeared happy and continued to thrive in T.R.'s home. In addition, T.R. wanted to continue the adoption process as a single parent after her husband's death. Furthermore, an adoption home study was completed and approved on January 8, 2016. Substantial evidence

supports the juvenile court's finding that A.Y. was likely to be adopted within a reasonable time.

B. No Exceptions to Termination of Parental Rights

1. Controlling statutory provisions and standards of review

The mother argues it was error to terminate her parental rights because the sibling and beneficial parent-child relationship exceptions applied. Section 366.26, subdivisions (c)(1)(B)(i) and (v) state: "[T]he court shall terminate parental rights unless either of the following applies: . . . [¶] (B) The court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship. [¶] . . . [¶] (v) There would be substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling and whether ongoing contact is in the child's best interest, as compared to the benefit of legal permanence through adoption." (See *In re Celine R.*, *supra*, 31 Cal.4th at p. 54; *In re K.P.* (2012) 203 Cal.App.4th 614, 621.)

Appellate courts have adopted differing standards of review for the juvenile court's rulings on the sibling and parental relationship exceptions. Most courts review for substantial evidence. (*In re G.B.* (2014) 227 Cal.App.4th

1147, 1165; *In re S.B.* (2008) 164 Cal.App.4th 289, 297; *In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1333-1334; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 576; *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952.) A few courts have applied an abuse of discretion standard of review. (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) More recently, courts have adopted both the substantial evidence and abuse of discretion standards of review. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395; *In re J.C.* (2014) 226 Cal.App.4th 503, 530; *In re K.P.*, *supra*, 203 Cal.App.4th at pp. 621-622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315.) In evaluating the juvenile court's determination as to the factual issue of the existence of a sibling or beneficial parental relationship, these courts review for substantial evidence. (*In re Anthony B.*, *supra*, 239 Cal.App.4th at p. 395; *In re J.C.*, *supra*, 226 Cal.App.4th at p. 530; *In re K.P.*, *supra*, 203 Cal.App.4th at p. 622; *In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1314.) But whether termination of the sibling and parental relationships would be detrimental to the child as weighed against the benefits of adoption is reviewed for abuse of discretion. (*In re Anthony B.*, *supra*, 239 Cal.App.4th at p. 395; *In re J.C.*, *supra*, 226 Cal.App.4th at pp. 530-531; *In re K.P.*, *supra*, 203 Cal.App.4th at p. 622; *In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315.)

2. Sibling Relationship Exception

The mother argues the sibling relationship exception precludes termination of her parental rights. The mother has the burden of proving termination of her parental

rights would substantially interfere with D.Y.'s and A.Y.'s sibling relationship. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 952; *In re Erik P.* (2002) 104 Cal.App.4th 395, 404.) As a preliminary matter, the mother forfeited this issue by failing to raise the sibling exception at the section 366.26 hearing. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293; *In re Erik P.*, *supra*, 104 Cal.App.4th at pp. 402-403.)

Assuming the issue has not be forfeited, the mother fails to provide any evidence showing termination of her parental rights would substantially interfere with the sibling relationship. The mother admits the children have been placed together since July 19, 2013. But she speculates the sibling relationship could be affected if T.R. did not adopt A.Y. The evidence does not support the mother's contention. T.R. remains committed to adopting both D.Y. and A.Y. An adoption home study was completed and approved on January 8, 2016. Furthermore, T.R. was identified as the prospective adoptive parent at the section 366.26 hearing. We conclude the sibling exception under section 366.26, subdivision (c)(1)(B)(v) does not apply under any applicable standard of review.

3. Beneficial Parent-Child Relationship Exception

The mother contends the beneficial parent-child relationship exception precludes termination of her parental rights. The mother must show that she maintained regular visitations with the children. (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643; *In re C.F.* (2001) 193 Cal.App.4th 549, 553-554.) In addition, the mother had the burden of proving her relationship with the children would outweigh the well-being they would gain in

a permanent home with an adoptive parent. (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1165; *In re K.P.*, *supra*, 203 Cal.App.4th at p. 621.) Evidence of frequent and loving contact is not enough to establish a beneficial parental relationship. (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 645; *In re Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1315-1316.) The mother also must show she occupies a parental role in the children's lives. (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1165; *In re K.P.*, *supra*, 203 Cal.App.4th at p. 621.) We use an abuse of discretion standard of review in evaluating the mother's arguments in this regard. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1348; *In re C.B.* (2010) 190 Cal.App.4th 102, 122.) But, as to the juvenile court's factual findings, we apply the substantial evidence standard of review. (*Ibid.*; see *Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711-712.)

As an initial matter, the mother forfeited the right to raise the beneficial parent-child relationship exception on appeal by failing to raise it below. (*In re S.B.*, *supra*, 32 Cal.4th at p. 1293; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1253.) Even if the issue is not forfeited, the mother fails to show the beneficial parent-child relationship exception applies in this case. The mother does not satisfy the first prong of the parent-child relationship exception because she did not maintain regular visits and contact with the children. A parent has regular visitation if she or he visits consistently and to the extent permitted by a juvenile court's order. (*In re I.R.* (2014) 226 Cal.App.4th 201, 212; *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1537.) The mother was incarcerated when the children

were detained on April 17, 2013 and had no contact with them until her release in October 2013. The mother consistently visited the children in November and December 2013. But she only visited twice in January and February 2014. The mother did not visit in March and only visited once in April 2014. She had a total of 10 visits between April and September 2014. The mother had sporadic telephone and video contact with the children between November 2014 and November 2015. Sporadic visitation is insufficient to satisfy the first prong of the parent-child relationship exception. (*In re Marcelo B.*, *supra*, 209 Cal.App.4th at p. 643; *In re C.F.*, *supra*, 193 Cal.App.4th at p. 554.)

Furthermore, the mother fails to show the children would benefit from continuing their relationship with her. The mother does not occupy a parental role in the children's lives. The children have been detained from the mother's custody since April 17, 2013, and have spent the majority of their lives with T.R. During the monitored visits, the mother interacted more with T.R. than with the children. Also, T.R. would role model for the mother most of the time. Sometimes, the mother would bring strangers to the visits. At times, the mother would make arrangements to visit but fail to show or arrive late. In addition, T.R. said the mother would sometimes smell of marijuana when arriving for visits. The juvenile court did not abuse its discretion in any respect.

V. DISPOSITION

The order terminating parental rights is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P.J.

We concur:

KRIEGLER, J.

BAKER, J.